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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-871

JOHN R. MANSON, COMMISSIONER OF CORRECTION
OF THE STATE OF CONNECTICUT,

*Petitioner,*

—v.—

NOWELL A. BRATHWAITE,

*Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

## BRIEF FOR THE PETITIONER

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### Opinions Below

The opinion of the Supreme Court of the State of Connecticut is reported, sub nomine, *State* v. *Brathwaite,* 164 Conn. 617, 325 A. 2d 284 (1973) (App. p. 7a).

The opinion of the United States Court of Appeals for the Second Circuit is reported, sub nomine, *Brathwaite* v. *Manson,* 527 F.2d 363 (1975) (App. p. 7a).

### Jurisdiction

The judgment of the Court of Appeals for the Second Circuit was entered on November 20, 1975 (App. pp. 9a, 10a). The petition for a writ of certiorari was filed on December 20, 1975, and was granted on May 3, 1976. The jurisdiction of this Court rests upon 28 U.S.C., Sec. 1254(1).

## Constitutional Provisions Involved

Petitioner maintains that the Court of Appeals, in reversing the judgment of the District Court, erred in concluding that in the conduct of his criminal trial in the State court the Respondent's rights under the Fifth and Fourteenth Amendments to the United States Constitution were violated.

## Questions Presented

1. Did the Court of Appeals err in concluding that evidence of an impermissibly suggestive and unnecessary out-of-court photographic identification received during the Respondent's criminal trial renders his conviction constitutionally invalid, notwithstanding the receipt of other reliable evidence during the trial serving as a valid basis for an in-court identification by the same identifying witness?

2. Did the Court of Appeals, in reversing the decision of the District Court, err in substituting its judgment of the facts for that of the trial court jury in reaching the conclusion that for other reasons the conviction should not stand?

## Statement of the Case

On May 5, 1970, at about 7:45 P.M., Jimmy D. Glover, a black undercover State Police Officer, and an informant went to a third floor apartment at No. 201 Westland Street, Hartford, Connecticut, to purchase narcotics from a suspected seller. Trial Transcript pp. 23-25. After he knocked, the door opened twelve to eighteen inches and Glover observed a black male standing in front of a female just inside the apartment. Tr. pp. 28, 29. It was not dark at the time, there was natural light coming from the



outside through the windows, and Glover "had no problem seeing at all in the hallway." Tr. pp. 27, 28. After the informant identified himself, Glover asked the male for some narcotics. This person then asked Glover to repeat his request. Glover did so, and the person then held out his hand and Glover gave him two $10 bills. The door which had remained open for two to three minutes then closed. After a few moments the door reopened, and the same male person placed two glassine bags containing heroin from his hand into Glover's hand before the door closed again. Tr. pp. 29-31, 73, 74. During the entire period the door was open Glover stood within two feet of the person from whom he had made the purchase while looking at his face. Five to seven minutes elapsed from the time the door first opened until it closed the second time. Tr. pp. 30-33. During the time of the sale Detective Michael D'Onofrio of the Hartford Police Department was stationed outside the building acting as a covering officer for Glover. Tr. pp. 58-60. Later the same evening Glover, who did not know his seller by name, described him to D'Onofrio as being a dark-complexioned black male, approximately five feet eleven inches tall, heavy build, black hair in an Afro style, with high cheekbones wearing blue pants and a plaid shirt. Tr. pp. 36, 37. D'Onofrio recognized the description given as that of Nowell Brathwaite whom he had seen on several prior occasions and whom he knew by sight. He then obtained a photograph of Brathwaite from the records division of the Hartford Police Department and dropped the photograph off at State Police Headquarters. Tr. pp. 63-65. On May 7, while at Headquarters, Glover viewed the photograph for the first time and identified the person shown as the same person from whom he had purchased the narcotics. Tr. pp. 36-38.

The toxicological report confirming the presence of heroin in the glassine bags purchased by Glover was prepared on July 16, 1970. Tr. p. 75.

Brathwaite was placed under arrest on July 27, 1970, while visiting a Mrs. Ramsey at her apartment on the third floor of No. 201 Westland Street, Hartford. Mrs. Ramsey was a friend of Brathwaite's wife, and he admitted that he had visited at the apartment "lots of times" prior to the date of the offense. The apartment was the same one at which the narcotics sale had taken place. Tr. pp. 112, 113, 121, 122, 176.

On January 8, 1971, during the trial of the case, the photograph from which Glover had identified Brathwaite was received in evidence without objection. Glover, who had not seen Brathwaite since the date of the sale, testified unequivocally ("There is no question whatsoever") that the person shown in the photograph was the same person from whom he had made the purchase. Glover, also without objection, made a positive in-court identification. Tr. 37, 38.

The Respondent was found guilty by a jury of twelve of both counts of a criminal information charging him with illegal sale and possession of narcotics. His conviction was affirmed by the Connecticut Supreme Court and he is in custody pursuant to the sentence imposed by the State trial court.

## Summary of Argument

1. The case of *Stovall* v. *Denno*, 388 U.S. 293, 87 S.Ct. 1967, 18 L.Ed.2d 1199 (1967), affirmed the right of a convicted accused to attack his conviction when evidence was received of a suggestive and unnecessary identification procedure. It did not establish a strict exclusionary rule, and the mere fact that evidence of a showup was received during a criminal trial does not mean that a fair trial was not afforded or that a due process violation occurred. What is of critical importance is the reliability of the



identification testimony under all of the circumstances of the case. In its decision in the case of *Neil* v. *Biggers*, 409 U.S. 188, 93 S.Ct. 375, 34 L.Ed.2d 401 (1972), this Court enunciated the various indicia of reliability which our courts should consider in weighing the impact upon the trier of suggestive and unnecessary identification evidence. Applying the *Biggers'* standards to the instant case, the identification evidence under the totality of the surrounding circumstances is reliable and the decision of the Court of Appeals should be reversed.

2. The Court of appeals ruled that even if it were wrong and the *Neil* v. *Biggers* standards were intended to apply to post-*Stovall* showups, for other reasons the Respondent's conviction should be set aside. In reaching its conclusion the Court has erroneously substituted its judgment for that of the trier of the fact in the State court and the reviewing judge in the federal district court. In so doing it has decided issues of motive as well as the reliability and credibility of testimony and, contrary to the accepted standard [*Glassner* v. *United States*, 315 U.S. 60, 80, 62 S.Ct. 457, 86 L.Ed. 680 (1942)], it has examined the evidence in a light which least supports the result reached by the trier.

## ARGUMENT

### I

**The Respondent's conviction following the receipt of evidence of a suggestive and unnecessary identification procedure did not violate his right to due process where other reliable identification testimony was also received.**

The Court of Appeals in the instant case, in concluding that the photographic identification was impermissibly and unnecessarily suggestive, has held that the Respond-

ent's conviction in the trial court was obtained in violation of due process standards:

> "Prior to *Neil* v. *Biggers,* supra, this alone would have permitted a speedy resolution of the case. This court and others had held that, except in cases of harmless error, a conviction secured as the result of admitting an identification obtained by impermissibly suggestive and unnecessary measures could not stand, see, e.g., *United States* v. *Fernandez,* 456 F.2d 638, 641-42 (2 Cir. 1972); *Kimbrough* v. *Cox,* 444 F.2d 8 (4 Cir. 1971); *United States* v. *Fowler,* 439 F.2d 133 (9 Cir. 1971); *Mason* v. *United States,* 414 F.2d 1176 (D.C. Cir. 1969), although, following the lead of *United States* v. *Wade,* 388 U.S. 218, 239-40 (1967), we allowed the prosecution to by-pass the tainted identification and introduce subsequent identifications or have the witness make an in-court identification if satisfied that these stemmed from the original observation of the defendant rather than the tainted identification. *United States ex rel. Phipps* v. *Follette,* 428 F.2d 912 (2 Cir. 1970) cert. denied, 400 U.S. 908 (1970); *United States ex rel. Gonzalez* v. *Zelker,* supra, 477 F.2d at 801-05. Here there would have been no occasion to consider whether Glover's in-court identification rested on his original observation (except for the bearing of this on a new trial) since the admission of the photographic identification would have been fatal constitutional error."
>
> *Brathwaite* v. *Manson,* 527 F.2d 363, 367 (1975) (2 CCA).

The Appeals Court reaches its decision by construing a passage from *Neil* v. *Biggers,* 409 U.S. 188, 93 S.Ct. 375, 34 L.Ed.2d 401 (1972), to mean that the standards for reliability of identification evidence enunciated in that decision have application only to pre-*Stovall* (*Stovall* v.



*Denno,* 388 U.S. 293, 87 S.Ct. 1967, 18 L.Ed.2d 1199 (1967)) cases with the strict exclusionary rule applying to those cases which post-date *Stovall* such as the present one:

> "Such a rule would have no place in the present case since both the confrontation and the trial preceded *Stovall* v. *Denno,* supra, when we first gave notice that the suggestiveness of confrontation procedures was anything other than a matter to be argued to the jury." 409 U.S. at 199.

What the Court of Appeals has said in rather specific language is that "[a]lthough the commentators differ concerning the meaning of this passage (footnote omitted) [the Court believes] that, at minimum, it preserves, in cases where both the confrontation and the trial were subsequent to *Stovall,* the principle requiring the exclusion of identifications resulting from 'unnecessarily suggestive confrontation'."

*Brathwaite* v. *Manson,* supra, 368.

This Court has long recognized the right of a convicted accused to attack his conviction when the criminal proceedings by which it was obtained offended the "canons of decency and fairness' and thereby deprived him of due process of law.

> *Malinski* v. *New York,* 324 U.S. 401, 416-417, 65 S.Ct. 781, 89 L.Ed. 1029 (1944).

More recently in *Stovall* the Court affirmed the right of a convicted accused to attack his conviction when during his trial evidence was received of an unnecessary and suggestive identification procedure. To permit a conviction without more to stand on such a foundation is clearly a violation of due process of law.

*Stovall* v. *Denno, supra,* 301-302.

The Court has told us in rather plain language why it is that suggestive confrontations are condemned:

> "Suggestive confrontations are disapproved because they increase the likelihood of misidentification and unnecessarily suggestive ones are condemned for the further reason that the increased chance of misidentification is gratuitous."
>
> *Neil* v. *Biggers,* supra, 198.

The principal concern from the standpoint of due process is that the admission of evidence of the confrontation may infringe upon the accused's constitutional right to a fair trial. This is most certain to occur when the State *relies* in its prosecution upon identification evidence which is "secured by a process in which the search for truth is made secondary to the quest for a conviction." *Palmer* v. *Peyton,* 359 F.2d 199, 202 (1966) (4 CCA).

The mere fact that a showup or suggestive confrontation has occurred, however, does not in and of itself violate any due process standard. If a violation occurs, it is when evidence of the defective procedure comes into the trial and, as a result thereof, a conviction is obtained.

> "Unlike a warrantless search, which may violate a constitutionally protected interest in privacy the identification of a suspect—whether fair or unfair—does not necessarily affect any constitutionally protected interest of the suspect. The due process clause applies only to proceedings which result in a deprivation of life, liberty or property. The due process issue does not arise until testimony about the showup—or perhaps obtained as a result of the showup—is offered at the criminal trial."
>
> *United States ex rel. Kirby* v. *Sturges,* 510 F.2d 397, 406 (1975) (7 CCA), cert. den. 421 U.S. 1016, 95 S.Ct. 2424, 44 L.Ed.2d 685.



But it does not follow, from the mere fact that such evidence is heard by the trier, that a fair trial has been denied. *Stovall* itself, in its reference to the totality of circumstances, did not establish a strict exclusionary rule or a new standard of due process. What the Court did in *Stovall* was to affirm the right to attack one's conviction ("This is a recognized ground of attack upon a conviction independent of any right to counsel claim" at p. 302), when it is based solely or largely on such tainted evidence. In short, *Stovall* reaffirmed the existence of an evidentiary right of due process which an accused person enjoys:

> "In essence what the *Stovall* due process right protects is an evidentiary interest. . . . It is part of our adversary system that we accept at trial much evidence that has strong elements of untrustworthiness—an obvious example being the testimony of witnesses with a bias. While identification testimony is significant evidence, such testimony is still only evidence, and, unlike the presence of counsel, is not a factor that goes to the very heart—the 'integrity'—of the adversary process. Counsel can both cross-examine the identification witnesses and argue in summation as to factors causing doubts as to the accuracy of the identification—including reference to both any suggestibility in the identification procedure and any countervailing testimony such as alibi."
>
> *Clemons* v. *United States,* 408 F.2d 1230, 1251, 133 App. D.C. 27 (1968), concurring opinion, Leventhal, J.

Whether a claimed violation of due process of law has in fact occurred can only be determined by an examination of all of the surrounding circumstances.

> *Stovall* v. *Denno,* supra, 302.
>
> "The mere fact that some 'unreliable' identification testimony was received does not establish a denial of

the due process right to a fair trial. That right is to be tested by assessing the totality of proof on the identification issue."

*Clemons* v. *United States,* supra, 1250-1251.

If the procedure is so aggravated and extreme that in effect the witness is all but compelled to identify the suspect, that alone will control and dictate that a violation has occurred.

*Foster* v. *California,* 394 U.S. 440, 443, 89 S.Ct. 1127, 22 L.Ed.2d 402 (1969).

Such is not true in the present case. Officer Glover, the identifying witness, was a trained police officer, and Detective D'Onofrio, who obtained the single photograph, recognized the Respondent from the description which Glover had given. D'Onofrio, who was acquainted with Brathwaite from having observed him on prior occasions in the same neighborhood, was not present when Glover viewed the single photo as it lay on his desk and exerted no pressure on Glover to make an identification.

It follows then that, although the procedure in the instant case was suggestive and unnecessary as well since it could have been avoided, the suggestiveness was not so extreme or pronounced under all of the circumstances as to make it inevitable that Glover would identify whomever appeared in the photograph. Indeed, one must strain to full capacity to adopt the Appeal Court's reasoning that Glover, by virtue of some moral obligation or professional courtesy, felt compelled to endorse D'onofrio's conclusion. *Brathwaite* v. *Manson,* supra, 367 Fn. 5.

Conceding, as the Petitioner does, the inherent suggestiveness and lack of necessity which pervaded the identification procedure, evidence of this at trial would not require a reversal of the Respondent's conviction for the reason that it does not automatically follow that his due



process rights were violated. On the contrary, this Court has suggested with some frequency that its chief concern is with the reliability of the identification evidence as a whole. This was most clearly demonstrated in *Coleman* v. *Alabama,* 399 U.S. 1, 90 S.Ct. 1999, 26 L.Ed.2d 387 (1970), where the Court endorsed the overall reliability of the identification evidence despite evidence of some questionable identification procedures used by the police.

The same principle (i.e., an assessment of the reliability of the identification evidence under all of the circumstances of the case) was earlier applied in a case, such as the instant one, which relied in part on identification by photograph:

"Taken together, these circumstances leave little room for doubt that the identification of Simmons was correct, even though the identification procedure employed may have in some respects fallen short of the ideal (footnote omitted). We hold that in the factual surroundings of this case the identification procedure used was not such as to deny Simmons due process of law or to call for reversals under our supervisory authority."

*Simmons* v. *United States,* 390 U.S. 377, 385-386, 88 S.Ct. 967, 19 L.Ed.2d 1247 (1968).

Later this Court, in holding that "as Stovall makes clear, the admission of evidence of a showup without more does not violate due process" (p. 198), defined the indicia of reliability:

"We turn, then, to the central question, whether under the totality of the circumstances the identification was reliable even though the confrontation procedure was suggestive. As indicated by our cases, the factors to be considered in evaluating the likelihood of misidentification include the opportunity of the witness to view the criminal at the time of the crime, the witness'

degree of attention, the accuracy of the witness' prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation."

*Neil* v. *Biggers,* supra, 199.

An application of the *Biggers'* guidelines to the facts and circumstances of the instant case leads forcefully to the conclusion that Glover's identification of Brathwaite was sufficiently reliable to avoid a due process violation:

1. *Opportunity to view the subject at the time of the crime.*

   Glover testified that for a period of not less than two to three minutes he stood within two feet of Brathwaite while looking at his face at the threshold to his apartment. Glover stated that during this period there was light both in the hallway and inside the apartment, and he had no difficulty at any time in seeing his seller.

2. *Degree of attention.*

   It is significant that Glover was not a mere casual observer, unaware or disinterested in what was occurring. Rather, he was a trained police officer on an undercover narcotics assignment. His contact with Brathwaite was for the purpose of exposing him as a narcotics dealer, and he was careful to form in his mind a definite image of the person with whom he was transacting the sale.

3. *Accuracy of the description.*

   Glover's description of his seller as given to Detective D'Onofrio minutes after the transaction was of a black male, five feet eleven inches tall, heavy build,



black hair in an Afro style, with high cheekbones. He was also able to describe some of the clothing worn. To say the least, the description is a rather detailed one, and, notwithstanding the deficiencies in the procedure, "its reliability", as the District Court points out, "is supported by the fact that it allowed D'Onofrio to pick out a single photograph that was thereafter positively identified by Glover." (App. p. 7a). Its accuracy may also be inferred from the fact that neither Brathwaite nor his wife, both of whom testified at trial, made any claim that his physical characteristics were unlike those described.

4. *Level of certainty.*

   Regardless of any flaw in the photo identification procedure there is no dispute that the photograph received in evidence during the trial was of the Respondent. The degree of Glover's certainty in identifying him as the seller is best illustrated by his testimony:

   "Q. And there is no question, then, I take it, that the photograph is of the person from whom you made the buy, is that what you said? A. There is no question whatsoever.

   Q. And that would be the person identified as the accused in this case sitting at the counsel table? A. Yes, it would be." Tr. p. 38.

And later:

"Q. Have you had occasion to see this accused since that date, since May 5th? A. No, I have not.

Q. You hadn't seen him before. A. No, I had not

Q. I think you said there is no doubt whatsoever in your mind that this is the same person from whom you made the purchase? A. No, there isn't." Tr. pp. 41-42.

5. *Length of time between crime and confrontation.*

Only a matter of minutes elapsed between the crime and Glover's description of his seller to Detective D'Onofrio. Thereafter no more than two days passed before Glover's photographic identification. Although there was an interval of eight months between the date of the offense and Glover's in-court identification, the period of time is not so significant as to lead to a conclusion that the recollection of the witness, a trained police officer, would have been affected.

If "*Stovall* makes clear", as *Biggers* has told us, "[that] the admission of evidence of a showup without more does not violate due process" (409 U.S. at 198), why should the rule be any different as to cases which arose after June 12, 1967? Accepting, as the Court has said (p. 199), that the "central question" is really one of reliability under all of the circumstances, and recognizing that no two cases present exactly the same fact pattern, it is for the trial and appellate courts to assess the impact of the showup evidence in ruling on the effect of its admissibility and the admissibility of other evidence which may have been derived from the showup. Judge McGowan of the District of Columbia Circuit expressed it clearly when he said:

> ". . . [T]he resolution of due process claims, both past and future, remains for us, as it was for the Supreme Court in *Stovall*, *Simmons*, and *Biggers*, an inescapable duty. That affirmances were the result in all those cases may or may not be significant, but in any event, we think the Court has formulated a broad standard of review which focuses upon the distinctive facts of each case in their totality, and which relies very heavily upon the special capacity of judges, trial and appellate, to discriminate between real and fancied dangers of the miscarriage of justice."
>
> *Clemons* v. *United States*, supra, 1237.



Certainly an appropriate cautionary instruction by the trial court can achieve much toward alerting a jury to the dangers of a miscarriage; *United States* v. *Barber*, 442 F.2d 517, 528 (1971) (3 CCA); while at the same time avoiding the absurd results which a strict exclusionary rule can produce:

> ". . . [T]here are obviously many situations in which there is no unfairness at all in the admission of showup testimony. If, for example, the victim of a violent crime informed the police that his assailant was his brother, or perhaps a close friend of many years, it would be absurd to criticize the police for having the victim identify a suspect in a one-to-one confrontation. The range of variation—from no unfairness at one extreme, through situations in which the jury can be safely relied upon to recognize the suggestive factors and discount the reliability of the identification to the other extreme in which wholly unreliable evidence is nevertheless so persuasive that fundamental fairness requires that it be excluded—is itself a persuasive reason for not concluding that an inflexible exclusionary rule is mandated by the Constitution."
>
> *United States ex rel. Kirby* v. *Sturges*, supra, 408.

Moreover, if it is the police and their use of unfair and inept identification procedures which are to be deterred (as *Biggers* tells us, pp. 198-199), then it is a problem which in the first instance the legislatures of the several states should deal with. As for the present case, no due process violation occurred in the trial court, the identification evidence under all of the circumstances was reliable, and the Appeal Court's decision should be reversed.

## II

**The Court of Appeals erred in substituting its judgment as to factual issues for that of the trial court jury and the reviewing federal court judge thereby permitting it to conclude that for other reasons the Respondent's conviction should not stand.**

In what might be described as a contingency opinion:

> "Even if we should be wrong in all of this and *Neil* v. *Biggers* was intended to apply the *Simmons* test to post-*Stovall* showups or photographic displays that were impermissibly and unnecessarily suggestive, as well as to in-court identifications following upon them, the writ should issue here."
>
> *Brathwaite* v. *Manson*, supra, 371—

The Court of Appeals has ruled in effect that the jury should have found the Respondent not guilty. The Court reached this conclusion by deciding that Officer Glover's testimony that natural light was present in the hallway at the time of the sale and his unequivocal in-court identification were not credible. Even more significantly the Court has decided that Glover was not a reliable witness to begin with:

> "The certainty of identification is far less persuasive when the expressions come from the lips of an undercover agent . . . than when they are the words of an ordinary citizen, whether a bystander or a victim." Id.

By the same token, the Court has attached plausibility to Brathwaite's explanation of his presence at the time of his arrest in the very apartment from which the sale had taken place ("But Brathwaite offered an explanation of this which was not implausible . . ." p. 372); and at the same



time has explained away the significance of this by implying that the location of the arrest was all part of a set-up which the police had contrived, presumably to strengthen their case against Brathwaite (". . .Brathwaite was . . . arrested when he was known to be in Mrs. Ramsey's apartment . . ." p. 372). It may be of interest to note that at no time during the trial of the case was any such claim even remotely raised by the defense.

The review of the Court of Appeals was the narrow and limited one of due process, and whether it was violated in the State trial court.

> *Donnelly* v. *DeChristoforo*, 416 U.S. 637, 642, 94 S.Ct. 1868, 40 L.Ed.2d 431 (1974);
> See also *Cupp* v. *Naughten*, 414 U.S. 141, 146, 94 S.Ct. 396, 38 L.Ed.2d 368 (1973).

It was not the function of the Appeals Court, the due process issue aside, to weigh and speculate about the reliability of witnesses and the credibility of testimony, matters which the twelve jurors were in a far superior position to evaluate:

> "It is not for this Court, any more than for a Federal District Court, in habeas corpus proceedings, to make an independent appraisal of the legal significance of facts gleaned from the record after such a conviction. We are barred from speculating—it would be an irrational process—about the weight attributed to the impermissible consideration of truth and falsity which, entering into the Connecticut trial court's deliberations concerning the admissibility of the confessions, may well have distorted, by putting in improper perspective, even its findings of historical fact. Any consideration of this 'reliability' element was constitutionally precluded, precisely because the force which it carried with the trial judge cannot be known."
>
> *Rogers* v. *Richmond*, 365 U.S. 534, 545, 81 S.Ct. 735, 5 L.Ed.2d 760 (1961).

Likewise, the mere fact that the evidence might lead to conflicting inferences and interpretations is not a valid basis for the Appeal Court's reversal.

> *Texas & New Orleans Railroad Company* v. *Railway & Steamship Clerks,* 281 U.S. 548, 559-560, 50 S.Ct. 427, 74 L.Ed. 1034 (1930);

See also:

> *United States* v. *Yellow Cab Co.,* 338 U.S. 338, 342, 70 S.Ct. 177, 94 L.Ed. 150 (1949).

On the contrary, the Court of Appeals, choosing as it did to examine the evidence, should have done so in the light which would most favorably support the jury's verdict.

> *Hamling* v. *United States,* 418 U.S. 87, 124, 94 S.Ct. 2887, 41 L.Ed.2d 590 (1974);
> *Glassner* v. *United States,* 315 U.S. 60, 80, 62 S.Ct. 457, 86 L.Ed. 680 (1942);
> *United States* v. *Merolla,* 523 F.2d 51, 53 (1975) (2 CCA).

The Petitioner respectfully submits that had it done so the decision of the District Court dismissing the petition would have been affirmed.



## CONCLUSION

**For the foregoing reasons, it is respectfully submitted that the judgment of the Court of Appeals for the Second Circuit should be reversed and the Respondent's application dismissed.**

Respectfully submitted,

Petitioner

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